

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Amanda McCarley,

Plaintiff,

vs.

Stout Insurance Company, LLC., *et al*,

Defendant(s).

2:24-cv-01697-CDS-MDC

ORDER DENYING IFP AND DISMISSING COMPLAINT

Pending before the Court is *pro se* plaintiff Amanda McCarley’s *Motion/Application to Proceed In Forma Pauperis* (“IFP”) (ECF No. 1) and Consolidated Amended Complaint (“Complaint”) (ECF No. 6). For the reasons stated below, the Court DENIES her IFP application and DISMISSES her Complaint with leave to amend.

DISCUSSION

I. BACKGROUND

Plaintiff initiated numerous suits against the same or similar defendants¹. The Court noted that plaintiff alleged a variation of the same underlying allegations for each defendant. *See* ECF No. 5. The Court ordered plaintiff to file a consolidated amended complaint that sets forth all claims against each defendant in this consolidated action on or before November 7, 2024. *Id.* Presently before the Court are plaintiff’s IFP application (ECF No. 1) and her consolidated Complaint (ECF No. 6).

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¹ *McCarley v. Bolero Apartments*, 2:24-cv-001693-MDC;
McCarley v. Stout Insurance Company, LLC, et al. 2:24-cv-001697-CDS-MDC;
McCarley v. Viking Villas, LLC, 2:24-cv-001698-JAD-NJK;
McCarley v. Stout Management Company, et al., 2:24-cv-01706-CDS-MDC;
McCarley v. Viking Villas, LLC, et al., 2:24-cv-01707-GMN-NJK;
McCarley v. Bolero, 2:24-cv-01710-JAD-MDC;
McCarley v. Viking Villas, LLC, et al., 2:24-cv-01722-JAD-BNW

II. THE PURPOSE OF RULE 11 AND INCLUSION OF UCC § 1-308

Upon reviewing plaintiff's IFP application and Complaint, the Court noted that plaintiff included with her signature, "UCC 1-308." This contravenes one of the fundamental purposes of Rule 11. The Federal Rule of Civil Procedure 11(a) states that "[e]very pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented." Fed. R. Civ. P. 11(a).

"One of the fundamental purposes of Rule 11 is to reduce frivolous claims, defenses, or motions and to deter costly meritless maneuvers ...thereby avoiding delay and unnecessary expense in litigation." *Christian v. Mattel, Inc.*, 286 F.3d 1118, 1127 (9th Cir. 2002) (internal quotations omitted). In sum, "Rule 11 is aimed at curbing abuses of the judicial system." *Bus. Guides, Inc. v. Chromatic Communs. Enters.*, 498 U.S. 533, 542, 111 S. Ct. 922, 928 (1991) (internal quotations omitted).

Plaintiff includes "UCC 1-308" next to her name. The relevant portion of UCC § 1-308 states,

A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

UCC § 1-308(a).

While the intended meaning is unclear, the Court notes that including "UCC 1-308" is a frequent and common tactic by those who adhere to the sovereign citizen movement. *See Tiffany v. Karen*, 2023 U.S. Dist. LEXIS 91639, at *4 (D. Nev. May 25, 2023) ("Plaintiff also appears to have included in the signature line a reference to "UCC 1-308" which appears to refer to some sort of reservation of rights. This is common in Moorish pleadings because they believe that by "reserving your rights" you can avoid the potential consequences of untruthful answers."); *see also Harper v. California Dep't of Corr. & Rehabilitations*, 2022 U.S. Dist. LEXIS 57821, at *2 (E.D. Cal. March 29, 2022) (collecting cases) (finding that inclusion of UCC 1-308 "has been used by persons who consider themselves to be 'sovereign citizens.'"). While the Court does not have reason to believe plaintiff adheres to the

1 sovereign citizen movement, the Court believes that plaintiff intends to include UCC § 1-308 as a means
2 to “avoid the potential consequences of untruthful answers.” Plaintiff cannot seek to absolve herself
3 from the consequences of untruthful or “frivolous” pleadings and/or filings. *C.f. United States v. Sykes*,
4 614 F.3d 303, 306 n.2 (7th Cir. 2010) (characterizing defendant's claim that the UCC relieved him of
5 criminal liability as “bizarre”). The purpose of Rule 11 is undermined when filers, such as plaintiff, seek
6 to “reserve her rights” and thereby avoid the penalty such consequences. *See Fed. R. Civ. P. 11(b)-(c)*
7 (permitting sanctions for violations of the rule).

8 To the extent that plaintiff attempts to assert such sovereign citizen/Moorish ideology in her IFP
9 application and Complaint, the Court rejects them. This Court and many others have rejected such
10 movements. *See Harper*, 2022 U.S. Dist. LEXIS 57821, at *2; *see also United States v. Studley*, 783
11 F.2d 934, 937, fn.3 (9th Cir. 1986) (finding that arguments based on sovereign citizen ideology is
12 frivolous and grounds for sanctions).

13 **III. IFP APPLICATION**

14 **A. Legal Standard**

15 Under 28 U.S.C. § 1915(a)(1), a plaintiff may bring a civil action “without prepayment of fees or
16 security thereof” if the plaintiff submits a financial affidavit that demonstrates the plaintiff “is unable to
17 pay such fees or give security therefor.” The Ninth Circuit has recognized that “there is no formula set
18 forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status.”
19 *Escobedo v. Applebees*, 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be destitute to
20 qualify for a waiver of costs and fees, but he must demonstrate that because of his poverty he cannot pay
21 those costs and still provide himself with the necessities of life. *Adkins v. E.I DuPont de Nemours &*
22 *Co.*, 335 U.S. 331, 339 (1948).

23 The applicant's affidavit must state the facts regarding the individual's poverty “with some
24 particularity, definiteness and certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)
25 (citation omitted). If an individual is unable or unwilling to verify his or her poverty, district courts have

1 the discretion to make a factual inquiry into a plaintiff's financial status and to deny a request to proceed
2 in forma pauperis. See, e.g., *Marin v. Hahn*, 271 Fed.Appx. 578 (9th Cir. 2008) (finding that the district
3 court did not abuse its discretion by denying the plaintiff's request to proceed IFP because he "failed to
4 verify his poverty adequately"). "Such affidavit must include a complete statement of the plaintiff's
5 personal assets." *Harper v. San Diego City Admin. Bldg.*, No. 16cv00768 AJB (BLM), 2016 U.S. Dist.
6 LEXIS 192145, at 1 (S.D. Cal. June 9, 2016). Misrepresentation of assets is sufficient grounds in
7 themselves for denying an in forma pauperis application. *Cf. Kennedy v. Huibregtse*, 831 F.3d 441, 443-
8 44 (7th Cir. 2016) (affirming dismissal with prejudice after litigant misrepresented assets on in forma
9 pauperis application).

10 **B. Analysis**

11 **a. Failure To Sign**

12 The Court finds that plaintiff failed to sign the IFP application. Therefore, the application is
13 incomplete. As discussed above, the signature requirement of Rule 11 serves as a certification of
14 compliance. Including "UCC § 1-308" in an attempt to avoid the consequences of non-compliance
15 contravenes the purpose of the Rule. Thus, this calls into question the veracity of plaintiff's answers in
16 the IFP application. Therefore, the Court will deny the IFP application on these grounds but will plaintiff
17 a chance to cure this deficiency. Should plaintiff choose to file a new IFP application, she is cautioned
18 that she cannot include "UCC § 1-308" or similar methods to "reserve her rights."

19 **b. Other Deficiencies**

20 Plaintiff's IFP application is deficient on other grounds. Plaintiff reports that in the past 12-
21 months she received, on average, \$2,737 a month but expects to receive \$0 in the following months.
22 ECF No. 1 at 1-2. Plaintiff reports no money in her savings and/or checking account. *Id.* at 2. Plaintiff
23 also reports no assets (i.e., no home, vehicle, or otherwise). *Id.* at 3. Plaintiff does not report any rent or
24 mortgage payments. Nor does plaintiff explain her housing circumstances. This is an issue that needs
25 clarification because plaintiff states that she spends \$198 a month in utilities and \$50 a month in home

1 maintenance. *Id.* at 4. Plaintiff also notes that she spends \$32 a month in homeowner's or renter's
2 insurance. The Court finds this inconsistent with plaintiff's lack of rental payments and/or mortgage
3 payments. Plaintiff also reports that she spends \$280 a month on transportation expenses (not related to
4 vehicle payments). *Id.* It is unclear whether these expenses are related to public transportation costs or
5 for gas. However, should these be gas payments, the Court finds this inconsistent with plaintiff's claims
6 that she has no motor vehicle related assets. Because plaintiff's answers in her IFP application are
7 inconsistent, the Court also denies her application on these grounds. The Court will give plaintiff an
8 opportunity to amend her IFP application. Plaintiff new, long-form IFP application must address these
9 inconsistencies as well as the Court's signature concerns.

10 **IV. COMPLAINT: FAILURE TO SIGN**

11 Based on its discussion above, the Court finds that plaintiff failed to sign her Complaint (ECF
12 No. 6). Because Plaintiff did not sign the complaint, the Court cannot consider it for screening. Rule 11
13 provides that "omission of the signature" may be "corrected promptly after being called to the attention
14 of the attorney or party." As such, the Court will grant plaintiff an opportunity to cure the defect. If
15 plaintiff chooses to cure the defect, she should file the new, properly signed complaint, in the form of an
16 amended complaint. Thus, plaintiff may not merely file a signature page. Plaintiff is advised that an
17 amended complaint supersedes the original complaint and, thus, the amended complaint must be
18 complete in itself. *See Rhodes v. Robinson*, 621 F.3d 1002, 1005 (9th Cir. 2010) (quoting *Loux v. Rhay*,
19 375 F.2d 55, 57 (9th Cir.1967)). ("[W]hen a plaintiff files an amended complaint, '[t]he amended
20 complaint supersedes the original, the latter being treated thereafter as non-existent.'" (internal citations
21 omitted). Plaintiff must not include "UCC § 1-308" in her signature, or any similar "reservation of
22 rights."

23 **V. ADDRESS**

24 The Court notes that there are some discrepancies in plaintiff's address. Plaintiff's Complaint
25 (ECF No. 6) notes that plaintiff is residing at 1556 E. Viking Rd., Apt. 1, Las Vegas, NV, 89119.

1 However, her "Certificate of Service" page lists 10120 W. Flamingo Rd., Ste 4-215, Las Vegas, NV
2 89147 as an address. Plaintiff is reminded that LR IA 3-1 requires her to "immediately file with the
3 court written notification of any change of mailing address, email address, telephone number, or
4 facsimile number." Thus, plaintiff should clarify whether her Viking Rd. address or her W. Flamingo
5 Rd. address is correct.

6 Plaintiff is advised that she cannot initiate service of process upon the defendants until plaintiff's
7 IPF application is approved and her amended and signed Complaint is screened. ACCORDINGLY,

8 **IT IS ORDERED that:**

- 9 1. The IFP application (ECF No. 1) is **DENIED WITHOUT PREJUDICE**.
- 10 2. Plaintiff must file a new long-form IFP application or pay the full filing fee by no later than
11 **December 12, 2024**, addressing the deficiencies. Failure to timely comply with the Court's
12 order may result in a recommendation that this case be dismissed.
- 13 3. The Consolidated Amended Complaint (ECF No. 6) is **DISMISSED WITHOUT**
14 **PREJUDICE**.
- 15 4. The Clerk of Court is kindly directed to send to plaintiff a [1] copy of this order, [2] the
16 form for filing a civil complaint, and [3] a copy of plaintiff's Consolidated Amended
17 Complaint (ECF No. 6).
- 18 5. If plaintiff choose to file an Amended Complaint addressing the Court's concerns, she must
19 use the approved form and write the words "Second Amended Complaint" in the caption.
- 20 6. Plaintiff must submit the properly signed amended complaint, **without use of UCC § 1-308**
21 **or other similar "reservation of rights,"** by no later than **December 12, 2024**. Failure to
22 timely comply with the Court's order may result in a recommendation that this case be
23 dismissed.
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1 7. If Plaintiff files an amended complaint, the Clerk of Court is directed NOT to issue
2 summons on the amended complaint. The Court will issue a screening order on the amended
3 complaint and address the issuance of summons at that time, if applicable.

4 DATED this 12th day of November 2024.

5 IT IS SO ORDERED.

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United States Magistrate Judge